

1189  
IN WITNESS WHEREOF I have hereunto set my hand  
And affixed my official seal of Fredericktown, MO  
this 12 day of June, a.d. 2008  
Paula Francis Recorder  
Beth White Deputy  
Recording Fee \$ 26.00  
State User Fee \$ 13.00  
Total \$ 39.00



**FILED**

PAULA FRANCIS  
RECORDER OF DEEDS  
MADISON COUNTY, MO

(Leave the space above blank for the County Recorder's Use.)

## COVENANT OF DEDICATION FOR RESTRICTED USE AS WETLANDS AND STREAMS

(A Perpetual Restriction on the Use of the Land, Running With The Title to the Land)

The STATE of MISSOURI, ex rel. the Missouri Highways and Transportation Commission, which is acting by and through the Missouri Department of Transportation, now stipulates to the following statements of fact, and further agrees to restrict the use and title of the realty described in Paragraph 2 below (hereinafter referred to as the "Land") in perpetuity, in accordance with the terms and conditions set forth herein.

### Stipulations of Fact

1. That the Missouri Department of Transportation (MoDOT), an executive department of Missouri state government that is constitutionally subordinate to the Missouri Highways and Transportation Commission, is the Applicant for Department of the Army permit, number P-2553/CES001558, in which MoDOT proposes to construct a multi-lane highway facility for Route 67 from south of Fredericktown to just south of Neelyville. The Applicant agrees that the U.S. Army Corps of Engineers has regulatory jurisdiction over these dredging and stream realignment operations pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344); and that the Missouri Department of Natural Resources has Water Quality Certification jurisdiction over these dredging and stream realignment operations pursuant to Section 401 of the Clean Water Act (33 U.S.C. § 1341).

2. That the STATE of MISSOURI, ex rel. the Missouri Highways and Transportation Commission, which is acting on behalf of the Missouri Department of Transportation, is the owner in fee simple title of a tract of Land, as follows:

The land and interests in real estate situated in the County of Madison, State of Missouri, surveyed and described as follows:

A tract of land described as beginning at a corner on the west right of way line of U. S. Highway 67, said corner being 760' West and North 39° 30' West 317 feet from the

southeast corner of Section 11, Township 31 North, Range 6 East; thence from said point of beginning following the west right of way line of Highway 67 at South 55° 30' West 1351' to a corner; thence departing from Highway 67 at North 37° West 1605' to a corner at Twelve Mile Creek; thence following Twelve Mile Creek upstream near center of said creek in an easterly and northeasterly direction 1400', more or less, to a corner; thence departing from said creek at South 39° 30' East 1120' to the beginning corner, containing 41 acres, more or less. Being located in the South Half of the Southeast Quarter and a small part in the Southeast Quarter of the Southwest Quarter of Section 11, Township 31 North, Range 6 East. Also, approximately 8 acres of the above-described 41 acres is a part of the North Half of the Northeast Quarter of Section 14, Township 31 North, Range 6 East, Madison County, Missouri.

3. That the above-mentioned dedication shall consist of the execution of this document by all parties necessary to restrict the use and title of the Land, and that this document shall be recorded in the office of the Recorder of Deeds for Madison County, Missouri.

4. That the terms and conditions of this Covenant shall, as of the date of execution of this document, bind the State of Missouri ex rel. the Missouri Highways and Transportation Commission to the extent of its legal and/or equitable interest in the land; and that this Covenant shall run with the Land and be binding on the Missouri Department of Transportation (MoDOT) and its successors and assigns forever.

5. That the terms and conditions of this Covenant shall be both implicitly and explicitly included in any transfer, conveyance or encumbrance of the Land or any part thereof, and that any instrument of transfer, conveyance or encumbrance affecting all or any part of the Land shall set forth the terms and conditions of this document either by reference to this document, or by setting them forth in full text.

#### **Deed and Land Use Restrictions**

The STATE of MISSOURI, ex rel. the Missouri Highways and Transportation Commission, hereby warrants that it is the owner in fee of the realty described above in Paragraph 2; and that this Land is hereby dedicated in perpetuity for use as a wetland and/or stream conservancy area.

The STATE of MISSOURI, ex rel. the Missouri Highways and Transportation Commission, acting for the Missouri Department of Transportation, hereby agrees to restrict the use and title of the Land as follows:

A. There shall be no construction or placement of buildings or mobile homes, fences (excepted if needed in the future to restrict vehicular traffic), billboards or other advertising material, or other structures, whether temporary or permanent, on the Land. Small signs designating the area and area regulations are permitted. Construction of a small parking lot in a non-wetland area and adjacent to the public road is permitted if it does not exceed ¼ acre in size.

B. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of soil, loam, peat, gravel, rock, minerals, vegetation or other materials from the Land or the wetlands therein, except by a subsequent U.S. Army Corps of Engineers permit, and then only for the purpose of maintaining or restoring the lake, stream or wetlands found on this Land. Modifications to the upland portions of the Land to improve wildlife habitat is permitted, as long as activities do not affect wetland or stream portions of the Land.

C. Management actions to improve wildlife habitat within the Land are permitted, as long as wetland and stream habitat are not negatively impacted. Permitted actions may include planting native trees and shrubs, and warm season grasses in the upland areas; developing small food plots in the upland areas for upland wildlife; developing ephemeral wetlands for amphibians and reptiles; implementing controlled and prescribed burns according to a burn plan prepared by the Missouri Department of Conservation or the Natural Resources Conservation Service; rotary mowing and disking of upland habitats; limited removal of trees to improve riparian corridor habitat and manage upland habitat; and herbicide application to eliminate fescue and other non-native vegetation.

D. The Land may be used for any outdoor recreational activities, including but not limited to hunting, fishing, trapping, bird watching, hiking, and other recreational uses. Temporary hunting blinds may be placed within the upland portions of the Land, in accordance with state and federal wildlife regulations. Walking trails may be placed on non-wetland portions of the Land, or with approval from Corps of Engineers.

E. There shall be no dumping of ashes, trash, garbage, rubbish, debris, vehicle bodies or parts, waste, or any other materials of any kind whatsoever on the Land or in its wetlands or streams.

F. Operation of motorized vehicles will be limited to that necessary for land management activities and emergency services to the site, and may include trucks, all-terrain vehicles, and agricultural equipment. Vehicles are not allowed into the wetland or stream features on the Land.

G. The Land described above, and its wetlands and/or streams shall be managed to maintain natural functions of the existing fen and stream, with no man-made obstruction or hindrance; and any stream upon the Land shall be allowed to flow freely and without any man-made obstacle or deviation; except as the District Engineer of the St. Louis District of the U.S. Army Corps of Engineers may determine proper or necessary.

H. This Covenant of Dedication for Restricted Use as Wetlands may only be changed, modified or revoked upon written approval of the District Engineer of the St. Louis District of the U.S. Army Corps of Engineers. To be effective, such approval must be witnessed, authenticated and recorded pursuant to the law of the State of Missouri.

I. This Covenant is made in perpetuity such that the State of Missouri ex rel. the Missouri Highways and Transportation Commission, and the Missouri Department of Transportation, and their successors and assigns forever, shall be bound by the terms and conditions set forth herein.

J. The undersigned hereby certifies that s/he is empowered by the Missouri Highways and Transportation Commission to execute this Covenant of Dedication for Restricted Use as Wetlands by and through that constitutional commission.

IN WITNESS WHEREOF, the State of Missouri ex rel. the Missouri Highways and Transportation Commission has executed this Covenant of Dedication for Restricted Use as Wetlands and Streams on this 30 day of May, 2008.

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION**

By Kevin Keith  
Kevin Keith  
Title: Chief Engineer

ATTEST: [Seal]

Dana Kaiser  
Asst. Secretary to the Commission Dana Kaiser

Approved as to form:

Micah Ray Alexander  
Commission Counsel  
Micah Ray Alexander

**ACKNOWLEDGEMENT BY THE COMMISSION**

STATE OF MISSOURI

COUNTY OF ~~COLE~~ <sup>Cole</sup> ~~Maries~~ ) ss.

On this 30 day of May, 2008, before me appeared Kevin Keith, to me personally known, who being by me duly sworn did say that he/she is the Chief Engineer of the Missouri Highways and Transportation Commission; that the seal affixed to the foregoing instrument is the official seal of the said Commission; that the said instrument was signed and sealed by and through the said Commission by the authority of that Commission; and that said Commission officer acknowledged that said instrument to be the free act and deed of the said Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Cole County, on the day and year written above.

Linda K. Conner  
 Notary Public  
 State of Missouri



LINDA K. CONNER  
 My Commission Expires  
 January 24, 2010  
 Maries County  
 Commission #06828941

My Commission expires: \_\_\_\_\_